

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
CLARKS FORK YELLOWSTONE RIVER BASIN (43D)
PRELIMINARY DECREE

CLAIMANTS: Kenneth J. Jarecke; Souad M. Jarecke

CASE 43D-6009-A-2022
43D 15012-00

ORDER AMENDING AND ADOPTING MASTER'S REPORT

Kenneth and Souad Jarecke filed a motion to amend the point of diversion for their claim 43D 15012-00. The Water Master ordered the Jareckes to publish notice of their proposed amendment because of its potential to impact other water users. The deadline for objections to the Jareckes' proposed amendment was January 29, 2023. No party filed an objection by the deadline.

The Jareckes sought to amend the point of diversion for their water right because the DNRC changed the original point of diversion during claim examination. The reasons behind the DNRC's decision to modify the Jareckes' water right were unclear and the Jareckes wanted their original point of diversion reinstated.

Mark and Beth Hagen filed a comment to the proposed amendment but did not object to the Jareckes' motion. The Hagens were former neighbors who owned the land where the original diversion was located. The Hagens stated they no longer owned that

land and identified Mitchell and Kristen Davis as the new owners. The Davises were placed on the service list of this case as a courtesy even though they had not filed an objection or sought to intervene.

The Water Master reviewed the information supplied by the Jareckes and concluded there was sufficient evidence to restore their point of diversion to its original location. On March 3, 2023, the Water Master issued her report recommending the point of diversion be amended. The day prior to issuance of the Master's Report, the Davises' attorneys filed an entry of appearance on the Davises' behalf.

On March 13, 2023, the Davises filed an objection to the Master's Report asserting there are no recorded easements or licenses authorizing use of their property for diversion of water pursuant to claim 43D 15012-00. The Davises contend that the Water Court has no authority to grant an easement across their property, that the location of the point of diversion recognized by the Water Master is incorrect, and that it is contradicted by a DNRC report from 1990.

There are several ways to become a party to a Water Court case. A person seeking to oppose an element of a water right may file an objection, a notice of intent to appear, or request intervention. The Davises did not pursue any of these options despite having notice of Jareckes' intentions. That notice was provided first in accordance with the requirement of Section 85-2-233(6), MCA, and second by the Water Master's inclusion of the Davises on the service list. Although the Davises' attorneys filed a notice of appearance prior to issuance of the Master's Report, that notice of appearance was not accompanied by any effort to become a party.

The Davises asserted in their objection to the Master's Report that they own the land on which the Jareckes' point of diversion is located, a fact they contend gives them "an interest in this matter." Davis *Objection to Master's Report*, 1 (March 13, 2023). The Davises' objection to the Master's Report was not supported by any evidence confirming they own the land on which the Jareckes' point of diversion is located.

The Davises have not taken the steps necessary to become parties to this proceeding and their attempt to participate is untimely. Their notice of appearance was

filed one day before issuance of the Master's Report, and their objection was filed without an order authorizing them to intervene.

In addition, the Water Court has not, as the Davises assert, defined an easement across their land. It has only identified a point of diversion for claim 43D 15012-00, an act it has performed tens of thousands of times pursuant to its exclusive jurisdiction to decide "all matters relating to the determination of existing water rights within the boundaries of the state of Montana...." § 3-7-224(2), MCA. The existence and scope of an easement across the Davis property, if any, was not discussed in the Master's Report. Determination of those issues is the province of a district court.

The Master's Report contains a typographical error in Conclusion of Law 2. COL 2 incorrectly identifies the point of diversion in claimant's motion to amend as the SENWNW of Section 20 when it should be the NENWNW of Section 20, Township 4 South, Range 2 East. The abstract attached to the Master's Report correctly identified the point of diversion.

The Davises' objection to the Master's Report is denied and the Master's Report is adopted without modification, except for correction of the typographical error referenced in the preceding paragraph.

ELECTRONICALLY SIGNED AND DATED BELOW.

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